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December 14, 1987

The Honorable Reid Ewing
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I87-160 (R87-038)

Dear Representative Ewing:

You have asked two questions relating to restrictions on the annexation of territory pursuant to A.R.S. § 9-471. You first inquired about the proper interpretation of the term "width of the annexed territory" as used in A.R.S. § 9-471(H)(3), and whether the term refers to the average width, the greatest width, the smallest width or something else. As explained below, we conclude that the term means the greatest width.

In 1980, the Arizona Legislature amended A.R.S. § 9-471 to prescribe limitations on the annexation of land strips. Laws 1980 (2nd Reg. Sess.) Ch. 226. A.R.S. § 9-471(H) provides:

Territory is not contiguous for the purposes of subsection A, paragraph 1 of this section unless:

1. It adjoins the exterior boundary of the annexing city or town for at least three hundred feet.
2. It is, at all points, at least two hundred feet in width, exclusive of highways.

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3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from such boundary is no more than twice the width of the annexed territory.

(Emphasis added.)

The legislature has not defined the word "width." Where words of a statute are not otherwise defined they will be given their ordinary, contemporary common meaning. Fagner v. Heckler, 779 F.2d 541, 543 (9th Cir. 1985); Accord, Valley National Bank of Arizona v. Educational Credit Bureau, 23 Ariz.App. 148, 15 [sic], 531 P.2d 193, 195 (1975) ("Language used in a statute should be given its ordinary, common meaning as understood by the average man, unless obviously used in a technical sense, or unless such construction would result in an absurdity."). The common meaning of the word width is "girth at the widest part." Webster's Third New International Dictionary at 2614 (1976).

As shown by A.R.S. § 9-471(H)(2) which requires annexed territory at all points to be at least two hundred feet in width exclusive of highways, the legislature was well aware that territories annexed by cities or towns when measured at different points could vary in width. Had the legislature intended to define the word "width" in a manner different than commonly understood it could have defined "width" by choosing a particular point at which the width of the annexed territory would be measured. Significantly, the legislature chose not to do so and, in fact, deleted such language from earlier drafts of the legislation.^{1/} "Successive drafts of the same act are instructive in determining the intent of the legislature, as the substitution or elimination of provisions necessarily involves an element of intent by the drafters." State v. Barnard, 126 Ariz. 110, 112, 612 P.2d 1073, 1075 (App. 1980).

^{1/}Versions of H.R. 2062, 34th Leg., 2nd Reg. Sess. § 1 (1980) prior to passage by the Arizona Senate provided that the width of the annexed territory be determined "where it adjoins the existing boundary."

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Given the common meaning of the word "width" and the legislative history of the act, we construe "width of the annexed territory" to mean the greatest width.^{2/}

Your second question is whether a municipality may complete a series of annexations which individually meet the requirement of A.R.S. § 9-471(H)(3), but in combination with one another do not. Our opinion is that each annexation is considered independently.

A fundamental rule of statutory construction is that nothing is read into a statute which is not within the manifest intention of the legislature as indicated by the statute itself. Union Rock & Materials Corporation v. Scottsdale Conference Center, 139 Ariz. 268, 678 P.2d 453 (App. 1983). A.R.S. § 9-471 does not consider successive annexations. Therefore, we conclude that each annexation must be treated separately in assessing its compliance with the statute.

Sincerely,



BOB CORBIN
Attorney General

BC:CW:lbg

^{2/}We recognize that if we were to interpret "width" to mean the smallest width it would, in effect, prohibit annexation of long, narrow parcels of land and that, as construed by this opinion, A.R.S. § 9-471(H) would not prohibit cities or towns from annexing qualifying land strips. Nothing, however, suggests that the legislature intended to prohibit all annexations of land strips. The title of Laws 1980 (2nd Reg.Sess.) Ch. 226 clearly indicates that the legislature was "prescribing limitations on annexation of land strips" rather than prohibiting them outright. "In determining the extent and operation of an act, a court must consider not only the law itself but also its title." Police Pension Board of the City of Phoenix v. Warren, 97 Ariz. 180, 185, 398 P.2d 892, 895 (1965).